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**CONFIDENTIAL – SUBJECT TO  
REQUEST FOR CONFIDENTIAL TREATMENT  
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

May 5, 2017

**Via E-Mail and Hand Delivery**

Mr. Eliot Greenwald  
Deputy Chief, Disability Rights Division  
Consumer and Governmental Affairs Bureau  
Federal Communications Commission  
445 12<sup>th</sup> St, S.W.  
Washington D.C. 20554

**Re: *Request for Confidential Treatment – Written Ex Parte in Support of Sprint Corporation’s Petition for Waiver of the Commission’s Speed of Answer Rule for Relay Services***

Dear Mr. Greenwald:

Sprint Corporation (“Sprint”) hereby submits the attached written *ex parte* in support of Sprint’s Petition for Waiver of the speed of answer (“SOA”) requirement which Sprint was unable to meet in relation to its Internet Protocol Captioned Telephone Service (“IP CTS”) due to Hurricane Matthew<sup>1</sup> Pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”) and the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>2</sup> Sprint requests

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<sup>1</sup> See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Sprint Petition for Waiver, CG Docket 03-123 (filed Dec. 27, 2016).

<sup>2</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure “to any extent not authorized by law” of “information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association”).

confidential treatment for the information that has been marked confidential in the attached Waiver (“Sprint Information”), which contains commercially sensitive information. The Sprint Information relates to Sprint’s provision of IP CTS services and includes company-specific, highly confidential and/or proprietary financial and commercial information, including cost data that are protected from disclosure by FOIA Exemption 4<sup>3</sup> and the Commission’s rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.<sup>4</sup>

1. *Identification of the specific information for which confidential treatment is sought.* Sprint requests that all of the information marked confidential contained in the attached Waiver be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission’s rules, which protect confidential financial, commercial and other information not routinely available for public inspection. The Sprint Information concerns the company’s provision of IP CTS services and includes speed of answer measurements, the dollar amount of the withheld compensation, information on daily and monthly IP CTS call volumes, information on call center staffing, confidential communications between Sprint and its call center management partner, and other operational details. This is company-specific, competitively-sensitive, business confidential and/or proprietary financial and commercial information concerning Sprint’s operations that would not routinely be made available to the public, and has been carefully guarded from competitors. If it were disclosed, Sprint’s potential competitors could use it to determine information regarding Sprint’s competitive position, operations, and performance, and could use that information to gain a competitive advantage over Sprint.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* Sprint is submitting this information in support of its Petition for Waiver filed on December 27, 2016 in CG Docket 03-123.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Sprint Information contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial and financial information.<sup>5</sup> This information can be used to determine information about Sprint’s operations and finances that is sensitive for competitive and other reasons. This information would not customarily be made

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<sup>3</sup> 5 U.S.C. § 552(b)(4).

<sup>4</sup> 47 C.F.R. §§ 0.457(d) and 0.459.

<sup>5</sup> The Commission has broadly defined commercial information, stating that “[c]ommercial” is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business’s commercial operations.” *Southern Company Request for Waiver of Section 90.629 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

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available to the public in this form and customarily would be guarded from all others, especially potential competitors, that could use the information to enhance their market position at Sprint's expense.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the provision of IP CTS, which was is subject to vigorous competition from other telecommunications relay service providers. If the information is not protected, Sprint's competitors and potential competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm. Disclosure could cause substantial competitive harm because Sprint's competitors and potential competitors could assess aspects of Sprint's commercial operations and financial position and could use that information to undermine Sprint's competitive position.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The Sprint Information is not available to the public, and has not otherwise been disclosed previously to the public. Sprint takes precautions to ensure that this information is not released to the general public or obtained by its competitors and potential competitors through other means.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Sprint requests that the Sprint Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* The Sprint Information is the same as or similar to the data and information that are required to be submitted to the Administrator of the Telecommunications Relay Fund under 47 C.F.R. § 64.604(c)(5)(iii). The Commission has recognized that such data and information are among the categories of commercial and financial information that should be routinely treated as confidential, and the Commission's rules contemplate that this information will be accorded confidential treatment.<sup>6</sup> Under applicable Commission and federal court precedent, the information provided by Sprint on a confidential

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<sup>6</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(I) (“[t]he administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form[.]”).

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basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The commercial and financial information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment to that information.<sup>7</sup> Failure to accord confidential treatment to this information is likely to dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to applications and policy issues under its jurisdiction.

If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Sprint to pursue appropriate remedies to preserve the confidentiality of the information.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Respectfully submitted,

/s/ *Scott R. Freiermuth*

Scott R. Freiermuth

Attachments

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<sup>7</sup> See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that “for whatever reason, ‘would customarily not be released to the public by the person from whom it was obtained’”) (citation omitted).

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May 5, 2017

**Via Hand Delivery**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Written *Ex Parte* in Support of Sprint's Petition for Waiver of the IP CTS  
Speed of Answer Measurement in relation to Hurricane Matthew,  
CG Docket Nos. 03-123

Dear Ms. Dortch:

Sprint Corporation ("Sprint") urges the Commission to grant Sprint's Petition for Waiver of the speed of answer ("SOA") requirement which Sprint was unable to meet in relation to its Internet Protocol Captioned Telephone Service ("IP CTS") due to Hurricane Matthew.<sup>1</sup> Specifically, Sprint seeks a waiver of the Commission's mandatory minimum standard which requires TRS providers to "answer 85% of all calls within 10 seconds" as measured on a daily basis. Sprint urges the Commission to waive this rule in order to reverse the decision by Rolka Loube Associates ("Rolka"), Administrator of the Interstate Telecommunications Relay Services Fund ("TRS Fund"), to withhold payment for Sprint IP CTS services rendered on October 6, 2016. As detailed in its Petition, Sprint believes good cause exists for a waiver of the Commission's rules due to an Act of God or *force majeure*.

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<sup>1</sup> See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Sprint Petition for Waiver*, CG Docket 03-123 (filed Dec. 27, 2016) ("Petition").

In further support of its Petition for Waiver, Sprint has attached an email summarizing the chronology of events and the actions taken by Sprint's call center management partner as Hurricane Matthew approached Florida. *See*, Attachment A. Sprint believes the email demonstrates thoughtful and well-reasoned operational decision-making considering the temperamental nature of hurricanes. Importantly, the email shows the advance planning that occurred as Hurricane Matthew neared the southeastern seaboard. Sprint and its call center partner clearly did not sit idly by as the hurricane approached. Rather, the hurricane was identified early, and an action plan was developed, implemented, and adjusted as the exact path and nature of Hurricane Matthew revealed itself. Indeed, planning started early – on September 27, 2016 – roughly 10 days before the hurricane impacted Florida. While hurricanes present logistical/operational quagmires, the email reveals constant attention to the situation and adaptation as Hurricane Matthew approached the Orlando call center. In short, Sprint believes the planning and actions taken, as summarized in the email, demonstrate due diligence in a very fluid, unpredictable *force majeure* situation.

As discussed in Sprint's Petition, the impact of the hurricane also posed a unique confluence of events or a "double-whammy" scenario. Specifically, Hurricane Matthew impacted the Orlando call center (one of Sprint's highest volume IP CTS call centers that was experiencing a severe [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] staffing shortfall due to the hurricane) and, coincidentally, Sprint experienced higher than average IP CTS call volume. Sprint herein supplements the record with a detailed look at the IP CTS call volumes for the month of October 2016. *See*, Attachment B. Both the daily call count and the minutes of use (MOU) were above monthly averages at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], respectively. As stated in its Petition, "Spikes in traffic can tax call center resources – and with one of Sprint's largest IP CTS call centers severely understaffed due to the hurricane – it is unsurprising that Sprint was not able to meet SOA given these factors."<sup>2</sup>

The fact that Sprint barely missed the 85/10 measurement is evidence of the due diligence of Sprint and its call center management partner. In other words, without efforts to mitigate the impact of Hurricane Matthew, one would expect the SOA measurement to have dipped substantially. Sprint believes the Commission should also take into account Sprint's exemplary track record in meeting and greatly exceeding the SOA measurement. As stated in its Petition, Sprint's daily average SOA measurement is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].<sup>3</sup> Indeed, Sprint only missed SOA one day in 2016 –

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<sup>2</sup> Petition at p. 3.

<sup>3</sup> Petition at p. 7.

October 6, 2016. Clearly, missing SOA is an anomaly for Sprint and the only rational explanation is that it was caused by Hurricane Matthew – the result of an Act of God.

Finally, Sprint urges the Commission to take into account the human element involved with hurricanes like Matthew and the highly unpredictable nature of such storms. The angst, the anticipation, the preparation, the fear – these all have a visceral impact on the people in the path of the storm – including Orlando IP CTS CAs. On Wednesday, October 5th at 8 PM, the Orlando Sentinel released an article stating that the then Category 3 Hurricane Matthew is “expected to intensify overnight into a Category 4 before it targets Florida’s coast.”<sup>4</sup> The article quoted Jenna Pagnotti, an Orlando resident, who stated aptly that she was “freaking out” upon learning “now that it’s a Category 4.”<sup>5</sup> In other words, as Floridians went to bed that Wednesday night, they were on alert that Matthew was expected to get stronger and more destructive. With the hurricane’s landfall anticipated late Thursday/early Friday, Floridians used the day and afternoon (of October 6) to prepare for the worst – to “batten down the hatches,” so to speak. That means getting fuel, going to the grocery store, boarding up windows, getting water, prepping generators, and eventually hunkering down – all in an effort to ensure that family, loved ones and property are safe and secure.<sup>6</sup> It is logical and understandable, therefore, that the CAs in the Orlando IP CTS call center were prioritizing their safety and security. In short, while Sprint and its call center management partners exercised due diligence in attempting to mitigate the hurricane’s impact, the human element and the fear caused by the expected, intensified Category 4 hurricane led to a much higher rate of absenteeism at the Orlando IP CTS call center than anticipated.

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<sup>4</sup> Orlando Sentinel, “Hurricane Matthew forecast to become Category 4 before hitting Florida,” (Oct 5, 2016). Available at <http://www.orlandosentinel.com/weather/hurricane/os-hurricane-matthew-central-florida-20161005-story.html>

<sup>5</sup> *Id.*

<sup>6</sup> In its Petition, Sprint noted the curfew issued in Orange County Florida. *See*, Petition at p. 3. It was announced the afternoon of October 6<sup>th</sup> and schedule to take effect at 10 PM October 6<sup>th</sup> through 7 AM October 8<sup>th</sup> (it was later modified and lifted at 2 PM on October 7<sup>th</sup>). Sprint mentioned the curfew to show the severity of the situation and its impact on peoples’ movement. The legalities and timing of the curfew, however, should not be viewed narrowly, and it would be unfair to presume that peoples’ behavior was *only* dictated by the curfew and that *only* the curfew would have excused absenteeism from the Orlando IP CTS call center. In other words, despite incentives to work that day and irrespective of the curfew, many Orlando-based IP CTS CAs prioritized understandably their safety and security on October 6, 2016.

Marlene H. Dortch  
May 5, 2017  
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This filing is made in accordance with 47 C.F.R. §1.1206(b)(2) of the Commission's rules. Please contact the undersigned with any questions or concerns about this filing.

Respectfully submitted,

*/s/ Scott R. Freiermuth*

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Scott R. Freiermuth  
*Counsel, Government Affairs,  
Federal Regulatory*

cc: Eliot Greenwald

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**ATTACHMENT A**

ALL INFORMATION CONFIDENTIAL

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**ATTACHMENT B**

**Sprint IP CTS – October 2016**

Reporting Date	Daily Call Count	Compensable Minutes	Daily SOA Percentage
10/01/2016			
10/02/2016			
10/03/2016			
10/04/2016			
10/05/2016			
10/06/2016			
10/07/2016			
10/08/2016			
10/09/2016			
10/10/2016			
10/11/2016			
10/12/2016			
10/13/2016			
10/14/2016			
10/15/2016			
10/16/2016			
10/17/2016			
10/18/2016			
10/19/2016			
10/20/2016			
10/21/2016			
10/22/2016			
10/23/2016			
10/24/2016			
10/25/2016			
10/26/2016			
10/27/2016			
10/28/2016			
10/29/2016			
10/30/2016			
<u>10/31/2016</u>			
Monthly Average			

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